

US Serial No. 10/505251
Page 5 of 11

Remarks:

Regarding the rejection of claims 1-8, 12, 13, 15, 16, 17, 20 and 21 under 35 USC 102(b) as being anticipated by XP-002249876 to Schieberle or WO 03/041515 to Berchtold:

The applicant traverses the Examiner's rejection of the foregoing claims in view of Schieberle reference or alternately, in view of the Berchtold reference.

Prior to discussing the Examiner's basis for lodging the rejection under 35 USC 102(b), the applicant points out that unpatentability based on "anticipation" type rejection under 35 USC 102(b) requires that the invention is not in fact new. See *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302, 36 USPQ2d 1101, 1103 (Fed. Cir. 1995) ("lack of novelty (often called 'anticipation') requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee"). Anticipation requires that a single reference describe the claimed invention with sufficient precision and detail to establish that the subject matter existed in the prior art. See, *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990).

It is the applicant's view that the Examiner has met the requirements of a proper "anticipation" type rejection over the Schieberle reference or alternately, in view of the Berchtold reference.

With respect first to the Schieberle reference, notably, Brassica seeds, or the genus, family or order of the plants producing Brassica seeds are not disclosed or mentioned by Schieberle. Schieberle is solely directed to sesame seeds. As is known in the art, sesame (*Sesamum indicum*) is a flowering plant in the genus *Sesamum* of the family Pedaliaceae, order Lamiales. Schieberle does not disclose any process for the treatment of seeds from the genus Brassica.

US Serial No. 10/505251
Page 6 of 11

Accordingly, it is the applicant's position that the Schieberle reference fails to teach, and hence fails to anticipate, the subject matter of the current claims, and that the Examiner's rejection should be withdrawn.

Turning now to Berchthold and in consideration of the newly amended claims presented in this paper, Berchthold uses brassica seeds but uses a maximum temperature which is proximate to the currently claimed minimum temperature claimed by the present applicant. Berchthold also fails to teach the applicant's preferred temperature range of between 160°C to about 250°C.

Notably, Berchthold does not disclose treating brassica seeds at a temperature of up to 210°C, contrary to examiner's assertion, since the higher temperature in Berchthold applies to leguminoses only, which again are different plants. For seeds of the genus Brassica, according to Berchthold, the lower temperature of up to 120°C applies, which both fails to anticipate the applicant's preferred temperature range and which concurrently also "teaches away" teaching away from using higher temperatures.

Accordingly, it is the applicant's position that the Berchthold reference fails to teach, and hence fails to anticipate, the subject matter of the current claims, and that the Examiner's rejection should be withdrawn.

Regarding the rejection of claims 1-7, 12, 15, 16, 20 and 21 under 35 USC 102(b) as being anticipated by XP-009014888 to Vasundhara et al.

The applicant traverses the Examiner's rejection of the foregoing claims in view of Vasundhara reference.

Vasundhara discloses heat-treating brown mustard (*Brassica juncea*) to achieve a change in flavor, the temperature is 120°C. Such is not the preferred temperature range of between 160°C to about 250°C which is presently claimed. Further, while the Examiner asserts that Vasundhara's furfural (or maybe the formed thiophene aldehyde) is the same

US Serial No. 10/505251
Page 7 of 11

compound as the applicant's FFT (2-furfurylthiol), which is not the case. For example, furfural does not have the thiol group of FFT, and thiophene aldehyde has a different ring structure including the S and without a thiol group, unlike FFT.

Thus, it is the applicant's position that the Vasundhara reference fails to teach, and hence fails to anticipate, the subject matter of the current claims, and that the Examiner's rejection should be withdrawn.

Regarding the rejection of claims 9-11, 16-19 under 35 USC 103(a) in view of one or more of XP-002249876 to Schieberle or WO 03/041515 to Berchtold or XP-009014888 to Vasundhara et al, further in view of US 3697290 to Lynn:

The applicant traverses the Examiner's rejection of the indicated claims in view of the combined Schieberle and Lynn references, or in view of the combined Berchtold and Lynn references, or in view of the combined Vasundhara and Lynn references.

The Examiner is respectfully reminded that with regard to any rejection based on obviousness under 35 USC §103(b), MPEP section 2143 states that three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. See, *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); *In re Rouffet*, 149 F.3d 1350, 1355-56 [47 USPQ2d 1453] (Fed. Cir. 1998). But see also *KSR International Co. v. Teleflex Inc.*, 82 USPQ2D 1385 (U.S. 2007)

US Serial No. 10/505251
Page 8 of 11

With regard to the combined Schieberle and Lynn references, for the sake of brevity the applicant repeats and incorporates by reference the prior remarks concerning the Schieberle reference.

With regard now to the Lynn reference, Lynn discusses a baked-type product and a process for producing the same which includes amongst various constituents an oil which as recited by Lynn at col. 4, lines 10 – 17 is selected from sesame, cotton seed and soybean oils. As is known in the art, sesame (*Sesamum indicum*) is a flowering plant in the genus *Sesamum* of the family Pedaliaceae, order Lamiales. Soybeans belong to the *Glycine* genus of another plant family, the Fabaceae, order Fabales. Cotton plants belong to yet another genus, *Gossypium*, yet another family, malvaceae, and yet another order, malvales. All these plants and seeds therefrom are therefore distinguishable and belong to a different genus, and a different plant family, and even a different plant order from Brassica plants, which belong to the genus *Brassica* of the Cruciferae family (aka Cruciferae, i.e. the mustard or cabbage family. This also applies to *Brassica nigra*, or black mustard, which again belongs to the mustard/cabbage family, unlike sesame, cotton or soybeans.

Notably, brassica seeds, or the genus, family or order of the plants producing brassica seeds are not disclosed nor even mentioned by Schieberle or Lynn and accordingly it is not believe that the combination of these two references would render the presently claimed invention as being obvious.

With regard to the combined Berchtold and Lynn references, for the sake of brevity the applicant repeats and incorporates by reference the prior remarks concerning the Berchtold reference.

As discussed above, Lynn discusses a baked-type product and a process for producing the same which includes amongst various constituents an oil which as recited by Lynn at col. 4, lines 10 – 17 is selected from sesame, cotton seed and soybean oils. As is known in

US Serial No. 10/505251
Page 9 of 11

the art, sesame (*Sesamum indicum*) is a flowering plant in the genus *Sesamum* of the family Pedaliaceae, order Lamiales. Soybeans belong to the *Glycine* genus of another plant family, the Fabaceae, order Fabales. Cotton plants belong to yet another genus, *Gossypium*, yet another family, malvaceae, and yet another order, malvales. All these plants and seeds therefrom are therefore distinguishable and belong to a different genus, and a different plant family, and even a different plant order from Brassica plants.

The combination of Lynn appears to add nothing to the inherent shortcoming of the Berchtold, and at best might suggest heating sesame, cotton seed and soybean oils to the temperature range taught by Lynn, but even if so construed, such would not teach or suggest the applicant's currently claimed invention.

With regard now to the final combination of references proposed by the Examiner, the combined Vasundhara and Lynn references, for the sake of brevity the applicant repeats and incorporates by reference the prior remarks concerning the Vasundhara reference.

As already discussed, Lynn relates to a baked-type product and a process for producing the same which includes amongst various constituents an oil which as recited by Lynn at col. 4, lines 10 – 17 is selected from sesame, cotton seed and soybean oils. As is known in the art, sesame (*Sesamum indicum*) is a flowering plant in the genus *Sesamum* of the family Pedaliaceae, order Lamiales. Soybeans belong to the *Glycine* genus of another plant family, the Fabaceae, order Fabales. Cotton plants belong to yet another genus, *Gossypium*, yet another family, malvaceae, and yet another order, malvales. All these plants and seeds therefrom are therefore distinguishable and belong to a different genus, and a different plant family, and even a different plant order from Brassica plants.

The Examiner's combination of the Vasundhara and Lynn references appears to be unfounded as Vasundhara discloses heat-treating brown mustard (*Brassica juncea*) to achieve a change in flavor, the temperature is 120°C. But no higher temperatures, including the applicant's preferred temperature range of between 160°C to about 250°C

US Serial No. 10/505251
Page 10 of 11

is suggested. Lynn only discusses a baked-type product and a process for producing the same which include one or more of sesame, cotton seed and soybean oils. The Examiner's combination of Lynn appears to add nothing to the inherent shortcoming of the Vasundhara, and at best might suggest heating sesame, cotton seed and soybean oils to the temperature range taught by Vasundhara, but even if so construed, such would not teach or suggest the applicant's currently claimed invention.

Accordingly, reconsideration of the propriety of the outstanding rejection of all of the claims is requested.

CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

PETITION FOR A ONE-MONTH EXTENSION OF TIME

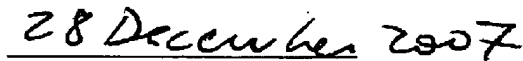
The applicants respectfully petition for a one-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

Respectfully Submitted;


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Date:

US Serial No. 10/505251
Page 11 of 11

CERTIFICATION OF TELEFAX TRANSMISSION:

I hereby certify that this paper and any indicated enclosures thereof is being telefax transmitted to the US Patent and Trademark Office to telefax number: 571-273-8300 on the date shown below:


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